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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

In re METROPOLITAN SECURITIES  
LITIGATION

No. CV-04-0025-FVS

**THIS DOCUMENT RELATES TO:  
ALL ACTIONS**

PLAINTIFFS' MEMORANDUM  
IN SUPPORT OF MOTION *IN  
LIMINE* TO EXCLUDE  
EVIDENCE RELATED TO TOM  
TURNER'S CRIMINAL  
CONVICTION AND DETAILS OF  
THE TRILLIUM TRANSACTION

Hearing Date: March 3, 2010  
Time: 9:00 a.m.

MEM. RE: MOTION *IN LIMINE* TO  
EXCLUDE EVIDENCE RELATED TO  
TURNER'S CONVICTION AND TRILLIUM  
TRANSACTION - 1  
(Case No. CV-04-0025-FVS)  
001245-1-335012M1



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## I. INTRODUCTION

PricewaterhouseCoopers (“PwC”) has designated evidence related to a specific 2002 Metropolitan transaction known as the Trillium transaction, and has also designated evidence of Defendant Tom Turner’s 2007 conviction on charges of misleading Ernst & Young (E&Y) with regard to the E&Y audit of the 2002 financials related to the Trillium transaction. PwC has also joined in E&Y’s exhibits, which contain even broader designations of this sort of evidence.

PwC's arguments for the relevancy and admissibility of this evidence, especially given that E&Y will no longer be at trial, are extremely attenuated. The details of the September 2002 Trillium transaction are not relevant to *any* issue in this case, and neither is Mr. Turner's conviction, which came years after the companies collapsed. Allowing this evidence into trial will simply result in a confusing and irrelevant sideshow about the complicated Trillium deal and Mr. Turner's conviction, and result in the jury baselessly speculating about whether Mr. Turner might have done the same thing to PwC on the 2000 audit – even though there is not a shred of evidence that he did. The evidence must be excluded in order to keep the trial and the jury focused on truly relevant matters.

## II. THE EVIDENCE SUBJECT TO THIS MOTION

The evidence designated by PwC and E&Y related to the Trillium deal and Mr. Turner's role in that deal is extensive (and PwC has stated an attempt to join in all E&Y designations). It includes documentation about all aspects of the exceedingly complicated deal, Turner's involvement in the deal, Turner's

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1 communications with E&Y, Metropolitan's internal investigations of Turner,  
 2 E&Y's conclusions about Turner, the long, subsequent criminal proceedings  
 3 against Turner, and his eventual conviction. Plaintiffs object to all of this material  
 4 as irrelevant, prejudicial, misleading, and confusing.  
 5

### 6 III. ARGUMENT

#### 7 A. The Evidence is Not Relevant

8 At the most fundamental level, the evidence regarding Turner and Trillium  
 9 must be excluded. A brief review of the facts will help demonstrate why that is.  
 10

11 The Trillium transaction (or transactions) was entered into in the last days of  
 12 fiscal year 2002 and involved a series of complicated transactions among related  
 13 companies on both sides of the transaction, who were exchanging funds. Mr.  
 14 Turner was the primary negotiator on this transaction for the Metropolitan  
 15 companies. He was convicted years later of lying to E&Y about one particular  
 16 intricacy of this transaction, namely the close and incestuous relationships between  
 17 the other parties involved in the deal. E&Y pointed directly to the Trillium  
 18 transaction, and to Turner's actions with regard to that transaction, when it  
 19 withdrew as auditor on January 20, 2004, and disavowed its prior audit opinions on  
 20 the 2001 and 2002 financials.  
 21

22 PwC, the one remaining defendant at trial, was never involved with the  
 23 Trillium deal (which concluded nearly a year and a half after PwC was terminated  
 24 as Metropolitan's auditor), was never lied to about the Trillium deal, and never  
 25 withdrew its auditing opinions because it thought Turner had lied. Further,  
 26

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1 Plaintiffs' claims that will proceed to trial are about whether the 2000 financial  
 2 statements audited by PwC contained material misrepresentations. A 2002  
 3 transaction is simply not relevant to those claims. Indeed, as PwC admitted in its  
 4 responses to objections to exhibits, "PwC agrees that evidence regarding  
 5 management's 2002 fraud is irrelevant to whether the 2000 financial statements  
 6 were materially misstated." Ct. Rec. 1003, p. 9.

8 Yet PwC nonetheless argues that this admittedly irrelevant evidence should  
 9 be allowed in because it bears on evidence of loss causation. *Id.* However,  
 10 nobody has ever claimed that the Trillium deal itself caused any loss in value of the  
 11 securities held by the Class, or that the Trillium deal played any role in the  
 12 companies' liquidity crisis. The *only* link PwC draws between the Trillium  
 13 evidence and loss causation is that E&Y withdrew its prior audit opinions on  
 14 January 20, 2004, and stated that its reason for withdrawing was that Mr. Turner  
 15 had lied to E&Y in 2002. *Id.* at 9-10. Yet PwC cannot show, and has not even  
 16 argued, how E&Y's alleged basis for that withdrawal (which is both hearsay and  
 17 hearsay within hearsay) entitles PwC to introduce alleged evidence of management  
 18 fraud on the 2002 financials and the fact that Mr. Turner was convicted 5 years  
 19 later of lying to E&Y. The reason, presumably, is that even if one accepts E&Y's  
 20 stated reasons for withdrawing, that does not make the details of Trillium and Mr.  
 21 Turner's conviction relevant to loss causation or any other issue in this case.  
 22

24 The only case PwC can make for any relevancy is that the withdrawal of  
 25 E&Y's audit opinion might be relevant to loss causation because the withdrawal  
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1 was publicly disclosed, and might have affected the value of the securities. *Id.* at  
 2 10. However, at most, that entitles PwC to establish simply that E&Y did not  
 3 withdraw because of anything that happened on the 2000 financials. To be clear,  
 4 Plaintiffs do not object to elicitation of that simple fact. But that does *not* mean  
 5 that it would be relevant for PwC to engage in a massive frolic and detour into the  
 6 details of Trillium and what Mr. Turner supposedly did and did not say.

7 PwC has made a few other, mostly feeble, arguments for the relevance of  
 8 this evidence. PwC claims that it must be allowed to demonstrate the reasons that  
 9 E&Y withdrew its audit opinions in January 20, 2004, because the withdrawal of  
 10 those opinions meant that Metropolitan and Summit could not have sold securities.  
 11 *Id.* at 9. Even if this theory was viable, it still would not mean that the details of  
 12 Trillium and Turner's conviction are relevant. All that is relevant under PwC's  
 13 new theory is that the opinions were withdrawn and that they were not withdrawn  
 14 because of material misrepresentations on the 2000 financials. And furthermore,  
 15 PwC's theory that the January 2004 opinion had any affect on the companies'  
 16 ability to sell securities is highly dubious. The companies had not had any  
 17 securities to sell since July 2003 because the SEC had not approved new  
 18 registration statements, and as PwC is fond of pointing out, the NASD had  
 19 temporarily barred MIS (Metropolitan and Summit's exclusive securities broker)  
 20 from selling securities in October 2003. Thus, there was no hope of selling  
 21 securities in 2004, and PwC's premise for the relevance of the Trillium/Turner  
 22 matter is baseless.

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1 PwC also argues that if Plaintiffs are successful in establishing a suit date  
 2 other than January 20, 2004, evidence of the Trillium transaction and Turner's  
 3 conviction would be relevant "to show that it was EY's withdrawal and not some  
 4 other disclosure that caused plaintiffs to file their original complaint ...." *Id.* at 11.  
 5 This argument is nonsensical. The reason Plaintiffs filed their original complaint is  
 6 completely irrelevant, therefore so is evidence that bears on the reasons.  
 7 Moreover, PwC's theory apparently supposes that Plaintiffs somehow learned of  
 8 E&Y's January 20 withdrawal and filed suit the same day. There is no evidence to  
 9 support such a theory, even if it was relevant. And the argument certainly does not  
 10 mean the Trillium deal and the Turner conviction are somehow rendered relevant.  
 11

12 **B. The Evidence Must Also Be Excluded Pursuant to FED. R. EVID. 404**

13 Even if the evidence was theoretically relevant, it would still be subject to  
 14 exclusion pursuant to FED. R. EVID. 404. Plaintiffs strongly suspect that the real  
 15 reason PwC wants to introduce evidence about Trillium and Mr. Turner's  
 16 involvement is that they want to explicitly or implicitly label Mr. Turner as the  
 17 type of person who lies to auditors. It appears that PwC wants the jury to believe,  
 18 or suspect, or speculate that because Mr. Turner was fraudulent with regard to the  
 19 2002 financials, he was also fraudulent in 2000 when PwC performed its audit.  
 20 This would be to PwCs great benefit, since it has no evidence that Mr. Turner (or  
 21 anyone else) defrauded it on the 2000 audit, yet joint and several liability for PwC  
 22 would not extend to Mr. Turner if he was found to be fraudulent on the 2000 audit  
 23 but PwC was not. *See* 15 U.S.C. § 77k(f)(1). Rule 404 specifically prohibits the  
 24

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1 use of evidence regarding Trillium and Turner for these purposes.

2 **C. The Evidence Must Also Be Excluded Pursuant to FED. R. EVID. 403**

3       Whatever relevance PwC might squeeze out of the details of Trillium  
 4 transaction and Turner's actions, that relevance is clearly and substantially  
 5 outweighed by the fact that PwC apparently wants to have a mini-trial on the facts  
 6 of the transaction. PwC denies this, claiming that it has designated only a few  
 7 exhibits, but PwC has also adopted all of E&Y's designations, and Plaintiffs would  
 8 almost certainly have to rebut any evidence with evidence of their own, and likely  
 9 attempt to defend Mr. Turner's role. That would be an incredible waste of time for  
 10 the jury, the parties, and the Court, and it would force Plaintiffs to use an  
 11 inordinate portion of their case on a transaction that was not even recorded on the  
 12 2000 and 2001 financial statements – the only financials to appear on a registration  
 13 statement at issue in this case. Essentially, the parties would have to retry the *U.S.*  
 14 *v. Turner* case, to no relevant end. The jury would almost certainly be misled and  
 15 confused by the evidence the parties would introduce on the transaction.

16       In addition, it would completely mislead and confuse the jury as to what the  
 17 proper use of this information was, even with a limiting instruction. It would also  
 18 unfairly prejudice Plaintiffs because it would greatly increase the likelihood that  
 19 the jury would find Mr. Turner (or others) to have been fraudulent on the 2000  
 20 financials, despite the lack of any evidence that they were. Given the nonexistent  
 21 or, at best, extremely low probative value of this evidence, it is clearly outweighed  
 22 by these risks and should be excluded.

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1 Dated this 16th day of February, 2010.  
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9 By /s/ Tyler S. Weaver  
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MEM. RE: MOTION *IN LIMINE* TO  
EXCLUDE EVIDENCE RELATED TO  
TURNER'S CONVICTION AND TRILLIUM  
TRANSACTION - 9  
(Case No. CV-04-0025-FVS)



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EXCLUDE EVIDENCE RELATED TO  
TURNER'S CONVICTION AND TRILLIUM  
TRANSACTION - 10  
(Case No. CV-04-0025-FVS)

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MEM. RE: MOTION *IN LIMINE* TO  
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TRANSACTION - 11  
(Case No. CV-04-0025-FVS)



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MEM. RE: MOTION *IN LIMINE* TO  
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TURNER'S CONVICTION AND TRILLIUM  
TRANSACTION - 12  
(Case No. CV-04-00025-FVS)



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